

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMIE QUINN,

Plaintiff,

File No. 2:09-CV-161

v.

HON. ROBERT HOLMES BELL

PIPE & PILING SUPPLIES (U.S.A.) LTD,
a foreign profit corporation, and RON
GRIFFITH, an individual,

Defendants.

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ORDER

This matter is before the Court on Defendants' appeal from the Magistrate Judge's July 30, 2010, order denying Defendants' motions regarding the filing of a counter-complaint. (Dkt. No. 61.) Defendants contend that the sole basis for the Magistrate Judge's ruling, the abrogation of Rule 13(f) of the Federal Rules of Civil Procedure, is erroneous, because it is at least arguable that the December 1, 2009, rule changes should not be applied to pending cases absent a specific finding that doing so would be just and practicable.

The Supreme Court provided that the 2009 amendments to the Federal Rules of Civil Procedure "shall take effect on December 1, 2009, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending." *Yost v. Stout*, 607 F.3d 1239, 1244 (10th Cir. 2010) (quoting U.S. Orders 2009-17 (March 26, 2009)). It was not improper for the Magistrate Judge to apply the 2009 amendments to

this pending case. Nevertheless, it appears to the Court that although Defendants cited Rule 13 as the basis for their motion, their motion should have been considered pursuant to Rule 15. The Court has referred non-dispositive pretrial matters concerning case management to the Magistrate Judge, and the Court declines to make a determination, in the first instance, whether Defendants should be granted leave to file a counter-complaint pursuant to Rule 15. Accordingly,

IT IS HEREBY ORDERED that the Magistrate Judge's ruling on Defendants' motions regarding the filing of a counter-complaint (Dkt. No. 61) is **VACATED** and **REMANDED** to the Magistrate Judge for reconsideration pursuant to Rule 15 of the Federal Rules of Civil Procedure.

Dated: August 25, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE